

COMMISSIONER'S DIRECTIVE #23

April 2004

(Supercedes Commissioner's Directive #22 issued January 2004)

DISCLAIMER: Commissioner's Directives are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules and court decisions. Any information that is not consistent with the law, regulations or court decisions is not binding on either the Department or the taxpayer. Therefore the information provided herein should serve only as a foundation for further investigation and study of the current law and procedures related to the subject matter covered herein.

SUBJECT: Delivery and Installation Charges Subject to Indiana Sales and Use Tax

I. INTRODUCTION

Effective January 1, 2004, Indiana enacted legislation to bring Indiana's sales and use tax statutes into conformity with the Streamlined Sales and Use Tax Agreement. A further change was made effective March 18, 2004 by HEA 1365-2004.

II. STATUTORY CHANGES

P.L. 257-2003 amended IC 6-2.5-1-5 concerning the definition of "gross retail income". That amendment included delivery and installation in the definition of gross retail income. HEA 1365-2004 removed installation from the definition of gross retail income and amended IC 6-2.5-4-1 to state that the transfer of tangible personal property in a retail transaction does not take place until after delivery.

III. DELIVERY CHARGES

Delivery charges are included in gross retail income and subject to tax regardless of shipping terms. Delivery that is made by or on the behalf of the seller of tangible personal property will be taxable whether or not the delivery charge is separately stated.

- A. Delivery charges billed and furnished by a third party are exempt.

Example #1 – A company purchases a piece of equipment from the manufacturer. The purchasing company hires a trucking company to pick up the piece of equipment at the manufacturer's facility and deliver it to purchaser's location. The shipping charges are not subject to sales tax because they are not included in a retail transaction.

- B. If the tangible personal property that is sold is not subject to sales tax because of an available exemption, then the delivery charges will not be subject to sales tax.

Example #2 – An office supply retailer purchases 500 ballpoint pens from a wholesaler for \$1,000. The wholesaler charges the purchaser \$100 to deliver the pens to the purchaser. The purchaser issues an exemption certificate to the wholesaler indicating that the pens are being purchased for resale. The entire \$1,100 charge is exempt from sales tax.

- C. Separately stated charges for delivery of prepared food beyond the seller's location are subject to sales tax.

Example #3 – A pizza parlor imposes a \$3.00 charge to deliver pizzas to customer's residence. The \$3.00 charge is subject to sales tax.

- D. Charges to incorporate tangible personal property into a permanent attachment to real property are not subject to sales tax. However, contractors that enter into time and material contracts are acting as retail merchants with regard to the tangible personal property transferred pursuant to such contracts. Any charges for delivery of tangible personal property included in a time and materials contract are subject to sales tax. Contractors that enter into lump sum contracts must pay sales tax or accrue use tax on any delivery charges incurred by the contractor with regard to the tangible personal property transferred pursuant to such contracts.

Example #4 – A contractor enters into a time and materials contract to replace a driveway. The contractor charges its customer \$100 for gravel and \$25 to have it delivered to the jobsite. The contractor must collect sales tax on the entire \$125 charge.

Example #5 – A contractor enters into a lump sum contract to replace a driveway. The contractor charges his customer a flat fee of \$5,000 to replace the driveway. The contractor purchases gravel from the aggregate company for \$100 and the aggregate company charges the contractor \$25 to deliver the gravel to the jobsite. The contractor must pay sales tax, or accrue use tax if he has given the aggregate company an exemption certificate, on the entire \$125 charge.


The Tax Court decision in *Cowden and Sons Trucking, Inc. v. Indiana Department of State Revenue*, 575 N.E. 2d 718 (Ind. Tax 1991) is no longer valid due to the statutory changes made by P.L. 257-2003 and HEA 1365-2004. Therefore, transportation companies that purchase tangible personal property for delivery to customers and charge their customers for the tangible personal property will be required to register as retail merchants and collect sales tax on the entire charge for such transactions.

Example #6 – A residential customer orders 3 yards of white rock to be delivered from a hauling company. The hauling company proceeds to an aggregate company and purchases 3 yards of white rock that it delivers and dumps at the customer's residence. The hauling company does not mark up the price of the white rock from the price it paid at the aggregate company and adds that amount to its hauling charges. The hauling company is acting as a retail merchant and must collect sales tax on the entire amount it charges its customer for the white rock and delivery regardless of whether the charges are separately stated on the bill.

IV. INSTALLATION CHARGES

As of March 18, 2004, separately stated installation charges are not subject to sales tax. For the period of January 1, 2004 through March 17, 2004, such charges were subject to sales tax. Sales tax should have been collected on such charges during that period.

Installation charges that are not separately stated from the selling price of an item or the delivery charge for an item will continue to be subject to sales tax.



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Commissioner